

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FREDA EPSTEIN REVOCABLE TRUST, FREDA
B. EPSTEIN, individually and as trustee of the
Freda Epstein Revocable Trust, JUDY L.
KAUFMAN, as a tenant in common, LISA D.
KAVA, as a tenant in common, NEAL S.
KAUFMAN, as a tenant in common, ROBERT
AND REBECCA EPSTEIN LIVING TRUST, as a
tenant in common, ROBERT A. EPSTEIN,
individually and as a trustee of the Robert and
Rebecca Epstein Living Trust, REBECCA B.
EPSTEIN, individually and as trustee of the Robert
and Rebecca Epstein Living Trust, DANIEL C.
EPSTEIN, as a tenant in common, and JENNIFER
SPRING MCPHERSON,

Defendants.

Adv. Pro. No. 10-04527 (SMB)

BC 14,0053

CONSENT JUDGMENT

WHEREAS, Irving H. Picard (the “Trustee”) is the trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), §§ 78aaa *et seq.*, substantively consolidated with the liquidation under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, of the estate of Bernard L. Madoff (“Madoff”), currently pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) as Case No. 08-01789 (SMB);

WHEREAS, the Trustee is duly qualified to serve and act on behalf of the estates of BLMIS and Madoff;

WHEREAS, on or about November 30, 2010, the Trustee commenced the above-captioned adversary proceeding in the Bankruptcy Court, alleging, *inter alia*, that Defendants Freda Epstein Revocable Trust (the “Trust”) and Freda B. Epstein, individually and as trustee and beneficiary of the Trust (the Trust and Freda B. Epstein, together, the “Epstein Defendants”), received avoidable transfers: (i) within two years prior to the Filing Date in an amount aggregating Five Hundred Fifty Thousand United States Dollars (\$550,000) (the “Two Year Avoidable Transfers”) and (ii) within six years prior to the Filing Date (inclusive of the Two Year Avoidable Transfers) in an amount aggregating One Million Seven Hundred Forty Four Thousand United States Dollars (\$1,744,000) (the “Six Year Avoidable Transfers”) in connection with BLMIS Account No. 1CM046 (the “Trustee’s Claims”);

WHEREAS, on April 30, 2012, the District Court dismissed the Trustee’s claims to recover the six year transfers from defendants in approximately eighty separate actions. See Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 476 B.R. 715 (S.D.N.Y. 2012),

supplemented (May 15, 2012) (dismissing claims except for claims asserted under 11 U.S.C. § 548(a)(1)(A)) (the “Dismissal Order”);

WHEREAS, the Trustee indicated his intent to appeal the Dismissal Order and counsel for various other defendants indicated their desire to participate in the appeal, resulting in the entry of a consent order (the “Consent Order”) certifying for entry of final judgment dismissing the Dismissed Claims, as defined in the Consent Order, as against defendants in approximately 600 actions, including Transferees. Consent Order, Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.), No. 12-MC-0115 (JSR) (S.D.N.Y. May 16, 2012);

WHEREAS, Trustee appealed the Dismissal Order to the United States Court of Appeals for the Second Circuit, and as of the date hereof, no decision has been rendered in connection with the appeal and the Dismissal Order;

WHEREAS, on or about May 5, 2014, the Trustee and the Epstein Defendants entered into a Settlement Agreement and Release (the “Settlement Agreement”), in order to settle the Trustee’s Claims upon the terms set forth therein;

WHEREAS, pursuant to the terms of the Settlement Agreement, the Epstein Defendants have consented to the entry of judgment against them (the “Consent Judgment”) with respect to the Trustee’s Claims and the Six Year Avoidable Transfers, *provided, however*, in the event of a final non-appealable order affirming the Dismissal Order, the Trustee shall, within seven (7) days of such decision and/or order, file a remittitur and/or take such other action as is necessary to reduce and amend the amount of the Consent Judgment from the Six Year Avoidable Transfers to the Two Year Avoidable Transfers;

WHEREAS, the Trustee has agreed to forbear from enforcing and/or executing on the Consent Judgment during the life of Defendant Freda B. Epstein, subject to terms of the

Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Subject to the terms of that certain Settlement Agreement, and as set forth in the recitals above, the Consent Judgment is hereby entered in favor of the Trustee and against the Epstein Defendants, jointly and severally, in the amount of \$1,744,000 (the “Judgment Amount”).
2. The Consent Judgment is defined and limited as set forth herein and by the terms of the Settlement Agreement.
3. The undersigned represent that the respective parties have obtained the advice of counsel and are consenting and agreeing to all of the terms of this Consent Judgment freely and voluntarily.

[Remainder of page intentionally left blank.]

4. The Clerk of Court shall enter this Consent Judgment on the docket.

AGREED AND CONSENTED TO AS TO FORM AND SUBSTANCE:

For Defendants:

/s/Robert A. Abrams

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For Plaintiff:

/s/Oren J. Warshavsky

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SO ORDERED

This 7th day of May, 2014

/s/ STUART M. BERNSTEIN

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE